



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDV/156000

PRELIMINARY RECITALS

Pursuant to a petition filed March 12, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on April 17, 2014, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner divested \$204,933.72 in assets.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On December 7, 2005, the Petitioner's sons, [REDACTED] and [REDACTED] created a Trust using money gifted to them by the Petitioner. (Exhibit 2, pgs. 29-33).
3. [REDACTED] was named the primary trustee and [REDACTED] was named the successor trustee. (Exhibit 2, pg. 29)

4. [REDACTED] and [REDACTED] are the named beneficiaries of the Trust; however, “they may use this property for the living and medical expenses of their mother.” (Exhibit 2, pg. 29)
 5. The Petitioner gave additional cash gifts to her sons, [REDACTED] and [REDACTED] totaling \$8602.63 on the following dates in the following amounts:

June 1, 2010	\$2,056.82
July 2, 2010	\$1,951.79
November 1, 2010	\$2,926.09
February 28, 2011	\$1,667.93
- (Exhibit 2, pg. 13; Exhibit 4)
6. The “cash gifts” came from Certificate of Deposit accounts that the Petitioner’s sons would cash out and transfer to the Trust’s accounts, because the Trust accounts had a better return on investment. (Testimony of [REDACTED])
 7. Between December 19, 2005 and June 3, 2011, the trust paid for the Petitioner’s nursing home expenses in an amount totaling \$188,954.84. (Exhibit 2, pg. 14)
 8. During this time, the Trust also managed a Thrivent investment for Petitioner, with costs totaling \$7,376.25. (Id.)
 9. On June 26, 2013, a “Reimbursement Agreement” was executed between the Petitioner and her sons’ Trust, in which the Petitioner transferred \$196,331.09 in assets to her sons/their Trust. This was to “reimburse” the Trust for the aforementioned nursing home expenses and the Thrivent investment management costs. (Exhibit 2, pg. 15)
 10. Petitioner paid the Trust \$164,224.02 from the cash surrender value of three life insurance policies that were transferred to her sons and Petitioner paid an additional \$32,087.07 in cash. (Exhibit 2, pg. 15)
 11. On December 3, 2013, the Petitioner applied for Medicaid benefits. (Exhibit 3)
 12. On February 14, 2014, the agency sent the Petitioner a notice indicating that her application for Medicaid benefits was denied because a divestment occurred and that she would not be eligible for Medicaid until March 21, 2016. (Exhibit 8)
 13. The Petitioner’s attorney filed an appeal on her behalf, that was received by the Division of Hearings and Appeals on March 12, 2014.

DISCUSSION

The administrative rules concerning divestments that occurred after August 9, 1989 are found under Wis. Admin. Code §DHS 103.065 (4), which states, “An institutionalized individual or someone acting on behalf of that individual who disposes of resources at less than fair market value ... shall be determined to have divested. A divestment results in ineligibility for MA for the institutionalized individual...” *Wis. Admin. Code §DHS 103.065 (4)(a) See Also Wis. Stats. §49.453(2); 42 U.S.C. §1396P(c)(1)(A) and (B)*

The “Look Back” period for transfers/divestments made after February 8, 2006 is 60 months. *Wis. Stats. §49.453(1)(f); 42 U.S.C. §1396P(c)(1)(B)*

In this case, there are two divestment issues. The first relates to the \$8,602.63 in cash gifts that the Petitioner gave to [REDACTED] and [REDACTED] between June 2010 and February 2011. The second relates to the \$196,331.09 that the Petitioner transferred to her sons’ Trust.

I. Are the \$8,602.63 in cash transfers a divestment?

It is undisputed that the Petitioner gave \$8,602.63 in cash “gifts” to her sons between 2010 and 2011. Petitioner’s attorney argued that the cash transfers to [REDACTED] and [REDACTED] fall into a divestment exception under *Medicaid Eligibility Handbook §17.4*, which states, in part:

If an individual had a pattern of charitable gifting, or gifting to family members (i.e. birthdays, graduations, weddings, etc.) prior to the look-back period, similar transfers during the look-back period would not be considered to have been given with the intent to divest as long as the total yearly gifts did not exceed 15% of the individual’s or couple’s annual gross income. This exception is not limited to gifts made on traditional gift-giving occasions and does not preclude a pattern of giving to assist family members with educational or vocational goals...

It is the contention of Petitioner’s attorney, that the Petitioner had a pattern of gifting to family prior to the “look back” period, that continued on and resulted in the \$8,602.83 in cash transfers. Petitioner’s son testified that the money in question came from Certificates of Deposit that were cashed out on their due dates and transferred to the Trust’s accounts because the Trust had a better rate of return.

Looking at Exhibit 2, pg. 13/Exhibit 4, and examining the gifts given prior to the 60-month “look back” period and after, there is no clear pattern to the “cash gifts” that occurred before the “look back” period, then followed through into the “look back” period. The amounts of money transferred are not the same, nor do they occur with any regularity. Indeed, Exhibits 2 and 4 list four cash gifts given between December 2005 and May 2006 that ranged from \$666.66 to \$38,779.28 and at least one of those gifts came from the sale of Petitioner’s home, not a Certificate of Deposit; then there were no cash transfers until October 2008, when Petitioner transferred \$4500 to her sons; then nothing again until 2010 when three cash gifts occurred ranging from \$1,951.79 to \$2926.09 and only one in February 28, 2011, for \$1,667.93.

The amounts of the cash transfers varied and the dates of the cash transfers varied. There is no indication that the cash transfers were made to commemorate / celebrate any particular event. Further, there is no evidence that the cash gifts were tied to any need to assist [REDACTED] and [REDACTED] with educational or vocational goals.

Based upon the foregoing, it is found that the transfer of \$8,602.63 in cash to [REDACTED] and [REDACTED] between June 1, 2010 and February 28, 2011, was not a part of regular gifting to family members and constituted a divestment.

II. Did the transfer of \$196,331.09 in cash and assets to [REDACTED] and [REDACTED]’s Trust constitute a divestment?

It is undisputed that the Petitioner transferred \$196,331.09 to her sons’ Trust in 2013. It is undisputed that the sons’ Trust paid for the Petitioner’s nursing home expenses between 2005 and 2011. [REDACTED] testified that the transfer of assets was to reimburse the Trust for the nursing home expenses and this was the family’s intention all along. This claim is not credible.

First, the “reimbursement agreement” was executed in 2013, two years after the last listed payment from the trust to Regent Manor. Second, there is no documentation showing that the money from the Trust was meant to be a loan to the Petitioner at the time the nursing home expenses were being paid. Third, the face page of the Trust clearly states that funds from the Trust may be used for the Petitioner’s medical expenses. There is no language in the Trust stating that the funds were meant to be a loan to the Petitioner. Finally, given that the “reimbursement agreement” was executed only six months before Petitioner’s application for Medicaid, it is more likely, that the transfer of assets and cash occurred, in an attempt to make the Petitioner Medicaid eligible.

For all of the foregoing reasons, it is found that the transfer of \$196,331.09 was a divestment.

CONCLUSIONS OF LAW

The agency correctly determined that Petitioner divested \$204,933.72 in assets.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

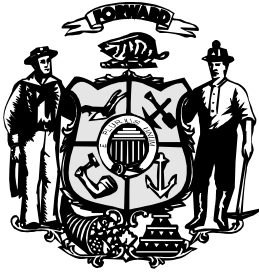
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of May, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 14, 2014.

Kenosha County Human Service Department
Division of Health Care Access and Accountability
Attorney Neil Guttormsen